



CALIFORNIA FARM BUREAU FEDERATION

NATURAL RESOURCES AND ENVIRONMENTAL DEPARTMENT

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Sent via E-mail

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January 28, 2011

Ms. Terry Macaulay
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Re: CEQA Scoping Comments on Delta Stewardship Council December 10, 2010 Notice of Preparation

Dear Council Members:

The California Farm Bureau Federation ("Farm Bureau") is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 76,500 members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

General Comment Concerning the Range of Issues Appropriate for Consideration in the Council's Scoping of It's Delta Plan EIR

In terms of general CEQA scoping comments in the traditional sense of the "range of actions, alternatives, mitigation measures, and significant effects to be analyzed," etc., not only Farm Bureau, but countless other parties as well, have provided exhaustive scoping and other legal and policy-related comments on tens of thousands of pages of Delta related documents, and in many thousands of hours of meetings, in connection with the Delta Vision Advisory Stakeholder Process, the Delta Vision Blue Task Ribbon Force's "Vision for the Delta" and Delta Vision Strategic Plan documents, the subsequent Resources Agency's Delta Vision Implementation Plan, the closely related, parallel Bay-Delta Conservation Plan, and other related Delta-related processes.

A vast public record of the full range of the views and perspectives of the diverse body participants in these various processes is publically available and no doubt already very familiar to the the Delta Stewardship Council ("Council") and its staff. With respect to potential

conveyance and ecosystem-related activities in the Delta proper, the large body of scoping and other public comments in the Bay-Delta Conservation Plan would no doubt tend to cover the general range of issues which should be similarly considered in connection with the Delta Plan EIR—and, of course, as material directly relevant to the current Delta Plan process, many public comments made in the successive rounds of the multi-phased Delta Vision process would be similarly responsive to the Council’s current Notice of Preparation (“NOP”).

Since the general contours of this large body of publicly available information are then intimately familiar to the Council and its staff, we will not endeavor to duplicate that information here and, instead, the remainder of these comments focuses on a handful of especially important policy concerns. At the same time, however, Farm Bureau reserves the right to supplement these comments with subsequent input on anticipated future iterations of the Council’s Draft Delta Plan itself, and on any additional topics of interest coming before the Council hereafter, as may be deemed appropriate at such time.

The Council’s Authorizing Statutes Set Important Bounds on the Council’s Delta Plan and Supporting CEQA Documentation

As the Council frames both the EIR for its Delta Plan and the Delta Plan itself, it is very important for the Council to bear in mind the statutory bounds established in its authorizing statutes. A number of these terms were exhaustively debated, deliberately negotiated, and carefully incorporated in the fabric of the Delta Reform Act 2009 as necessary conditions for that legislative package’s successful passage, and must not now be overlooked or forgotten. Some of the most important of these provisions include the following:

Water Code, § 85031. Limitations on division

(a) This division does not diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, rights to water appropriated prior to December 19, 1914, provided under the law. This division does not limit or otherwise affect the application of Article 1.7 (commencing with Section 1215) of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463, and Sections 12200 to 12220, inclusive. [...]

(d) Unless otherwise expressly provided, nothing in this division supersedes, reduces, or otherwise affects existing legal protections, both procedural and substantive, relating to the state board's regulation of diversion and use of water, including, but not limited to, water right priorities, the protection provided to municipal interests by Sections 106 and 106.5, and changes in water rights. Nothing in this division expands or otherwise alters the board's existing authority to regulate the diversion and use of water or the courts' existing concurrent jurisdiction over California water rights.

Water Code, § 85032. Subjects not affected by division

This division does not affect any of the following: [...]

(b) The California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code).

(c) The Fish and Game Code.

(d) The Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000). [...]

(h) *The application of the public trust doctrine.*

(i) *Any water right.* [...]

Water Code, § 85057.5, subd. (b) and (c). ("Covered action")

(b) "Covered action" *does not* include any of the following:

(1) *A regulatory action of a state agency.* [...]

(c) *Nothing in the application of this section shall be interpreted to authorize the abrogation of any vested right whether created by statute or by common law.*

The Legal Delta Defines the Proper Legal and Geographic Focus of the Council's Delta Plan and EIR

While the NOP, citing Water Code section 85020, identifies various "objectives" thought be "inherent" in the co-equal goals, the most important of these objectives are, of course, the objectives relating to activities within the statutory Delta itself: Namely, Delta conveyance and water supply reliability, the Delta ecosystem, and "protecting and enhancing" existing values and resources of the Delta itself.

As noted in the NOP, the Council's authorizing legislation directs it to develop a "legally enforceable" Delta Plan. The Council's primary means of legal enforcement of the Delta Plan lies in its "consistency finding" and "appeals" authorities. As defined in Water Code section 85057.5, "covered activities" subject to the Council's "consistency finding" and "appeals" authorities are essentially activities relating to provisions of an adopted Delta Plan, occurring within the Statutory Delta itself.¹ In contrast, various aspects of the Plan designed to "promote," "recommend," or "identify" actions outside of the Council's Primary Planning Zone are decoupled from any legal enforcement authority vested in the Council—whereas the Council's authorizing statutes expressly state that the Reform Act itself effectuates no change whatsoever in the statutory authorities and responsibilities of any other state agency, with respect to such things as water rights, regional planning, area-of-origin laws, enforcement of the reasonable use doctrine, or administration of the public trust doctrine. All of this then reaffirms the conclusion that the primary focus of the Council's Delta Plan should be limited in scope to activities occurring with the statutory Delta itself.

Protecting and Enhancing Values within the Delta Itself

With respect to the Delta itself, it would appear that the Council's conception of its fundamental charge to "protect and enhance the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place" is far more modest than what the plain

¹ Water Code, § 85057.5. (a) "Covered action" means a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions: (1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh. (2) Will be carried out, approved, or funded by the state or a local public agency. (3) Is covered by one or more provisions of the Delta Plan. (4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.

meaning of that charge clearly implies. Thus, while an “Economic Sustainability Plan,” a National Heritage Area designation, a Delta Trails program, or the establishment of possible “market incentives to protect and enhance agricultural values” are things which may or may not prove beneficial to the Delta, these things alone are, of course, completely inadequate to “protect and enhance” existing values in the Delta, including especially the Delta’s important agricultural economy. Rather, what is, of course, required to ensure that these values can truly endure is much more fundamental, and consists of such things as sufficient fresh water, long-term investment in, and maintenance of Delta levees, an adequate and reliable water supply, basic respect for and protection private property rights, recognition of existing water rights and longstanding historic uses of water, and the placing of reasonable limits on the extent of potential land use changes and proposed conversions of existing farmland to habitat.

To “protect and enhance the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place” is a fundamental part of the Council’s charge, quite fully on a par with its charge to achieve balanced implementation of the “co-equal goals.” Meeting this charge will require much more than mere lip service to “unique Delta values.” In recognition of this fundamental charge, the Delta Plan must include real and meaningful commitments to ensure that the necessary components for a viable Delta economy can continue and co-exist, alongside other important interests and resources within the state.

Conclusion

Farm Bureau once again thanks the Council for the opportunity to provide input on these important matters of statewide importance lying within the Council’s area of delegated statutory responsibility.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin E. Fredrickson", with a long horizontal line extending to the right.

Justin E. Fredrickson
Environmental Policy Analyst

JEF